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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/799,138	03/12/2004	Bernard I. Levine		7923

7590 01/07/2005  
Irving Keschner  
Suite 1150  
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EXAMINER

THOMAS, DAVID B

ART UNIT	PAPER NUMBER
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3723

DATE MAILED: 01/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 10/799,138	Applicant(s) LEVINE, BERNARD I.	
	Examiner David B. Thomas	Art Unit 3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 12 March 2004.  
 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-4 is/are pending in the application.  
     4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-4 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☒ The drawing(s) filed on 12 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
     a) ☐ All    b) ☐ Some \* c) ☐ None of:  
         1. ☐ Certified copies of the priority documents have been received.  
         2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
         3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Claim 1 recites the limitation "said vertical portion" in line 5-6, and the limitation "the inner surface" in line 6. There is insufficient antecedent basis for these limitations in the claim.

4. Claim 1 recites the limitation "a horizontal edge portion" in line 5, and then recites "said horizontal portion". It is unclear from the claim language whether "said horizontal portion" refers back to "a horizontal edge portion" or not.

5. Claim 3 is indefinite because it states that a fastener "is inserted into *one of* said *holes*"[emphasis added], and claim 2, from which it depends, recites "at least one hole", which the examiner understand that this language includes a base having more than one hole, but in order for claim 3 to be complete, i.e. definitive, there must be at least two holes in order for the fastener to be inserted into one of said holes.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-4, as well as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Stolpe (D164,459) or Wilson (2,671,362).

Either Stolpe ('459) or Wilson ('362) disclose a bottle opener for removing a bottle cap from a bottle and having a triangular shape and adapted for mounting to the underside of a horizontal surface, the opener having a base, first and second leg portions extending substantially perpendicular to the base and having first and second ends, a third leg extending between the first ends of the first and second leg portions, and a horizontal edge portion extending from the vertical portion, and having a distance from the base such that a bottle cap may be inserted between the horizontal edge portion and the base, in order to remove a bottle cap. The respective bases have holes such that a fastener may be inserted to secure the opener to the surface.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-4, as well as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Woodbury (3,120,771).

Woodbury ('771) discloses a container opener and closing device. Woodbury ('771) teaches that the device has at least three "leg" portions extending substantially perpendicular to the base, that the base has at least one hole formed therein, and that the

device is to be mounted to the underside of a horizontal surface (Col. 1, lines 40-43, and lines 54-63). Furthermore, Woodbury ('771) teaches the provision of a horizontal edge portion 1 that extends from two of the "leg" portions in order to provide means for removing a pressed-on or crown cap, and suggests that two of the "leg" portions form a V-shape with respect to each other, and considering the arrangement of a third "leg" portion, the container opener portion of the device has a triangular shape. Therefore, it would have been an obvious matter of design choice to provide a horizontal edge portion on only one, or any one of the "leg" portions of the device of Woodbury ('771), since the applicant has not disclosed that the particular arrangement of the elements to define the bottle opener solves any stated problem, or that the particular arrangement is critical to the function of the opener, and it appears that the device of Woodbury ('771) would perform equally well.

### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hawley et al., Miller, Reyes, Wolford et al., Braukmann, Funka, Sr., Hoffberger, Zorzi, Hogan et al., Huff, Smith, Porter, Jr., Lurcott, and Eames each disclose an opener.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David B. Thomas whose telephone number is (571) 272-4497. The examiner can normally be reached on 7-4 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph J. Hail can be reached on (571) 272-4485. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David B. Thomas  
Primary Examiner  
Art Unit 3723

dbt